

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JERRY B. PALMER,)
Plaintiff,)
vs.) Case No. 10-CV-0718-MJR
DOCTOR FENOGLIO,)
Defendant.)

ORDER

REAGAN, District Judge:

Plaintiff Jerry B. Palmer is before the Court seeking leave to appeal *in forma pauperis* (Doc. 49).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R.App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir.2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (citing *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 631 (7th Cir.2000).

Palmer was granted leave to proceed as a pauper in the district court, and his current financial affidavit and prion trust fund account statement confirm that he remains indigent and unable to pay the full appellate filing fee (*see* Docs. 6, 49). Therefore, the Court finds that Plaintiff is indigent.

Palmer indicates that he intends to appeal the Court's finding that he did not exhaust administrative remedies before filing suit, and the resulting grant of summary judgment for defendant Fenoglio. Given that the exhaustion issue turned in great part on a factual issue, this Court considers Palmer's appeal to be taken in good faith.

Therefore, for Plaintiff Palmer's motion for leave to proceed on appeal as a pauper (Doc. 49) is **GRANTED**. The Clerk of Court is directed to transmit a copy of this Order to the Clerk of Court for the Court of Appeals for the Seventh Circuit.

IT IS SO ORDERED.

DATED: June 15, 2012

s/ Michael J. Reagan
MICHAEL J. REAGAN
UNITED STATES DISTRICT JUDGE